IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11th JULY 2007 / 20TH ASHADHA 1929

CRL.A.No. 1096 of 2002(C)

APPELLANT: COMPLAIANT

CBI - REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.S.SREEDHARAN PILLAI, (SC)
ADV.SRI.S.SREEKUMAR (SC) FOR C.B.I

RESPONDENTS: ACCUSED

---

1. S.RAGHAVAN PILLAI, SHEEJA MANDIRAM,
HOUSE NO.142, WARD NO.1, KARIKODE, KILIKOLLOOR
PANCHAYAT, QUILON-5.

2. P.A.PHILIP, PADAPPAKKAL HOUSE,
KEEKOZHUR P.O., VIA. RANNI.

3. KUNAL DALMIA, NO.II, BISHOP GARDEN,
MADRAS -38.

4. L.N.DALMIA (DIED), MANAGING DIRECTOR,
M/S. PUNALUR PAPER MILLS, PUNALUR.

5. K.SHANMUGHAM, PULLUKATTU HOUSE,
NADAKKAVU P.O., UDAYAMPERUR, ERNAKULAM.

BY ADV. SRI.A.ANTONY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.1096 of 2002(D)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 11th day of July, 2007

J U D G M E N T

The appellant, a C.B.I Inspector, is the complainant in C.C.No.23/1998 before the Special Judge, Special C.B.I Court (SPE/CBI)-I, Ernakulam, with respect to the offences under Section 120B, 420, 468, 471, 477A Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The Special Judge closed the proceedings and acquitted the accused in the light of the directions in the decision of the Supreme Court in **Common Cause a Regd.Society through its Director vs.Union of India and other respondents [1996 AIR SC 1619].**

2. The present appeal has been filed disputing the correctness of the order of the court disposing of the matter on the basis of the ratio of the decision in Common Cause's case. While the present matter was pending, the Larger Bench of the Supreme

Court overruled the ratio laid down in Common Cause's case by the decision in **Ramachandra Rao vs.State of Karnataka [2002 (2) KLT 189 SC].** Apparently, in view of the decision in Ramachandra Rao's case, the order of the court below has to be set aside and the matter remitted back to the court below for fresh disposal.

3. The counsel for the respondent/accused has strongly opposed the application, contending that the decision in Ramachandra Rao's case, as such, cannot be treated as a ground to set aside the order of the court below, as the court below has considered the evidence partly adduced in the matter and, hence, as per the observations in the decision in Ramachandra Rao's case, this order is not liable to be set aside. The counsel relied on the observations of Ramachandra Rao's case at para '37', that the decision in Ramachandra Rao's case shall not be a ground for re-opening a case or proceeding by setting aside any such acquittal or discharge, which has already achieved finality and reopen the trial against the accused. I find that the

instant case has evidently not attained finality, in view of the fact that the appeal was pending.

Evidently, the matter could not be disposed of by the Special Judge in the above manner as the delay was on account of systemic delay, which is squarely the point covered by Ramachandra Rao's case. I find that the contention of the counsel for the respondent has no merits. Appeal is allowed and the matter is remitted back to the trial court for fresh disposal. The parties shall appear before the court below on 10/08/2007. The court below is directed to dispose of the matter on a priority basis considering the fact that the final report was filed in the year 1993.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.1096 of 2002(D)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

11th July, 2007